

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 9099 of 2003****For Approval and Signature:****HON'BLE MR JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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PRINCIPAL STREE ADHYAPEN MANDIR & 1 - Petitioner(s)
Versus
AJITBHAI MOTIBHAI PUROHIT - Respondent(s)

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Appearance :

Mr. HD Dave, AGP for Petitioner No(s).: 1,2.
MR TR MISHRA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH**Date : 22/07/2005****ORAL JUDGMENT**

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Labour Court, Vadodara in Recovery Application (Old) No. 245 of 1997 dated 16.10.1999 as

well as the order passed in Recovery Case No. 16/2002.

2. It appears from the record that the respondent workman had preferred the aforesaid Recovery Application under Section 33(C)(1) of The Industrial Disputes Act, 1947, for getting benefits under Government Resolution dated 22nd March 1978 and requested to grant pay-scale of Rs. 750-940 with effect from the date of his appointment instead of pay-scale of Rs. 196-232. The Labour Court, Vadodara, by judgment and order dated 16.10.1999 passed in Recovery Application (Old) No. 245/1997 directed the petitioner to give benefit of the above Government Resolution dated 22nd March 1978 and to put the workman in the pay-scale of Rs. 800-15-1010 with effect from 1.4.1979. It appears from the record that on the basis of the same another Recovery Case No. 16/2002 was filed by the respondent workman and the Labour Court, Vadodara passed the order directing the petitioner to pay an amount of Rs. 60,989. Being aggrieved and dissatisfied with the aforesaid two orders, the petitioner has preferred the present petition under Article 226/227 of the Constitution of India.

3. Shri Hasit D. Dave, learned AGP has submitted that the Recovery Application which was submitted by the petitioner was under Section 33(C) (1) of the ID Act and considering the provisions of

Section 33(C)(1) of the said Act where there is no settlement or award there is no question of invocation of jurisdiction under Section 33(C)(1) of the ID Act and therefore even without going into the merits of the case the Recovery Application itself was not maintainable. He has therefore requested to allow the present Special Civil Application. On merits also, Shri Dave has tried to make out a case.

2.1. However, in view of consideration of provisions of Section 33(C)(1) of the ID Act when the Recovery Application itself was not maintainable, this Court is not going into the merits of the case.

4. Shri TR Mishra, learned advocate appearing on behalf of respondent workman has failed to produce anything on record to show whether there was any settlement or award for which the order under Section 33(C)(1) was required to be passed. Shri Mishra has also failed to satisfy this Court whether the application under Section 33(C)(1) of the Act submitted by the respondent workman was maintainable or not.

5. Under the circumstances, without going into the merits of the case, and considering the fact that there was no award or settlement in favour of the respondent workman, the application submitted by the respondent workman under Section 33(C)(1) itself was

not maintainable, the order passed by the Labour Court, Vadodara, in Recovery Application (Old) No. 245/1997 as well as the order passed in Recovery Case No. 16/2002 are required to be quashed and set aside and are hereby quashed and set aside. However, it is observed that it will be open for the respondent workman to raise industrial dispute if it is otherwise maintainable. Rule is made absolute with no order as to costs.

[M.R. Shah,

J.]

RMR